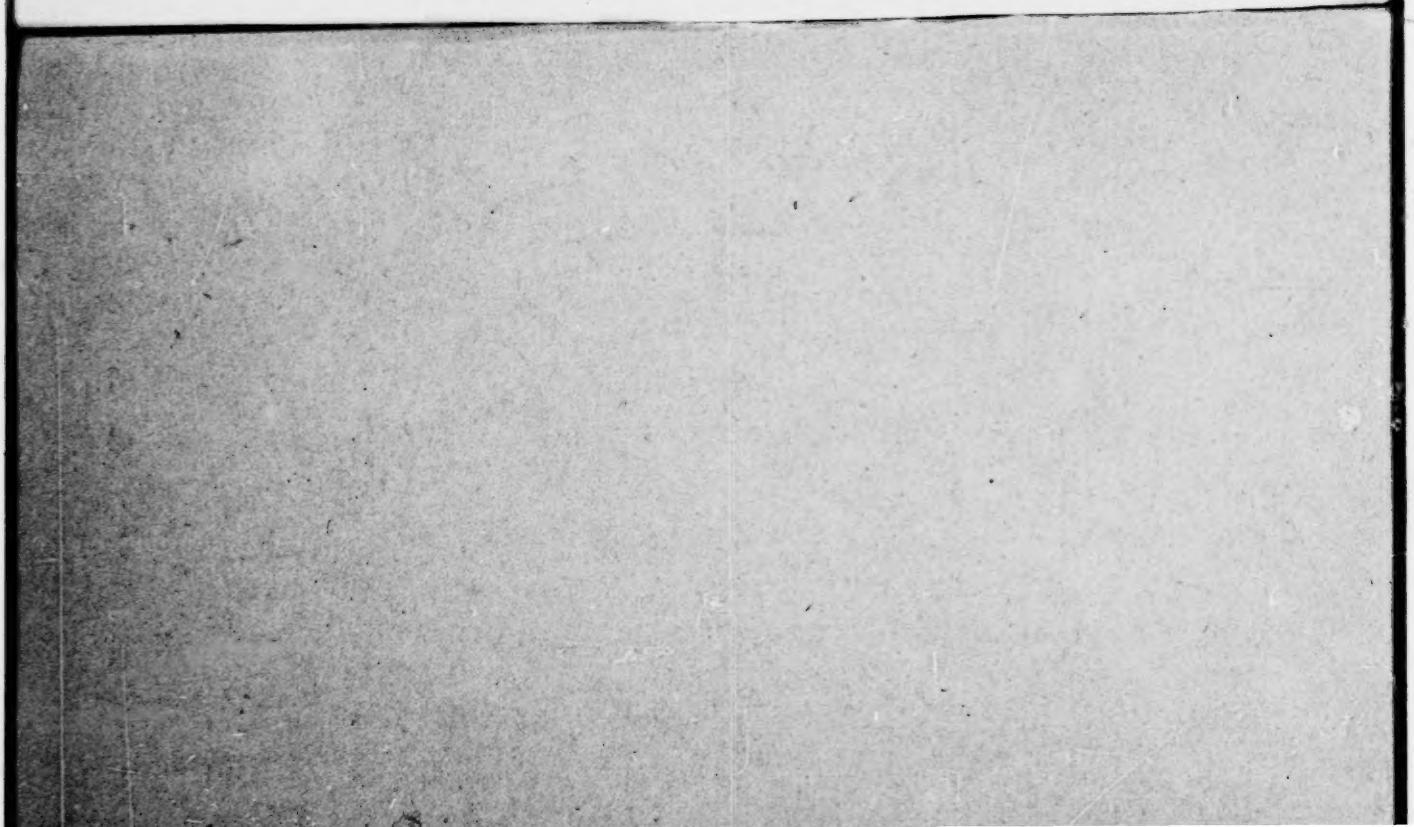

Supreme Court of the United States.

No. 359.—October Term, 1905.

The United States, Appellant, vs. William A. Clark. } Appeal from the United States Circuit Court of Appeals for the Ninth Circuit.

[March 5, 1906.]

Mr. Justice Holmes delivered the opinion of the Court.

This is a bill for the cancellation of eighty patents for timber lands in Montana, now owned by the defendant, on the ground that the patentees did not purchase the same in good faith for their own exclusive use and benefit, but for speculation and under agreement by which their title should enure to the benefit of another, and that the defendant knew the facts in a general way, if not in detail. Act of June 3, 1878, c. 151, § 2, 20 Stat. 89; Extended to all public land States by Act of August 4, 1892, c. 375, § 2, 27 Stat. 348. The defendant pleaded that he was a *bona fide* purchaser, excepted as such from the invalidation of the patents by the Act, and denied the material allegations of the bill. Voluminous evidence was taken, and at the hearing the bill was dismissed by the Circuit Court. 125 Fed. Rep. 774. That Court found that Clark had no actual knowledge of the alleged frauds or of facts sufficient to put him on inquiry, 125 Fed. 776, 777, and, considering the requirement of clear proof according to the statement of this Court in the *Maxwell Land-Grant Case*, 121 U. S. 325, 381, further was of opinion that the original frauds alleged were not made out. The Circuit Court of Appeals, in view of the pendency of indictments, did not discuss the alleged original frauds, but, assuming for the purposes of decision that they had been committed, confirmed the findings of the Circuit Court with regard to Clark. One judge dissented on the ground that Clark knew enough to be put upon inquiry. 138 Fed. Rep. 294. The United States then appealed to this Court.

The bill proceeds upon the footing that Clark has the legal title to the lands in question. The entrymen conveyed to one Cobban, the alleged partner in their frauds, and Cobban conveyed to Clark, all by warranty deeds. It is true that they conveyed before the patents issued, shortly after obtaining the receiver's receipt, but it is assumed that the legal title, when created, followed the deeds. We make the same assumption. *Landes* v. *Brant*, 10 How. 348. *Bush* v. *Cooper*, 18 How. 82. *Myers* v. *Croft*, 13 Wall. 291. *United States* v. *Detroit Timber & Lumber Co.* (Feb. 19, 1906.)

See further, *Ayer* v. *Philadelphia & Boston Face Brick Co.*, 159 Mass. 84. But the position is that Clark is privy to the original frauds, and that, even if he is not, inasmuch as he did not purchase on the faith of the patents, he has no better title than the entrymen would have had if the title had remained in them. No distinction is attempted on the ground that the deeds as well as the bargain preceded the patents.

We may assume for the purposes of decision, as did the Circuit Court of Appeals, that the original frauds are made out, although there is a great amount of testimony to good faith. But the point of law just stated has been disposed of by *United States* v. *Detroit Timber & Lumber Co.*, decided last week [insert vol. & page.] The United States is attempting to upset a legal title. In order to do that it must charge Clark with notice of the original frauds. The fact that Clark, while he had a merely equitable or personal claim against the Government, held it subject to any defect which it might have, whether he knew it or not, as generally is the case with regard to assigned contracts not negotiable, was not equivalent to actual notice of the defect. It is recognized in the act of March 3, 1891, c. 561, § 7, 26 Stat. 1098, that there may be a *bona fide* purchaser before a patent issues. The title when conveyed related back to the date of the original entries. Therefore actual notice must be proved.

But so far as actual knowledge or notice on the part of Clark is concerned, both of the Courts below found in explicit terms that the proof failed. We perceive no sufficient reason for departing from the rule that, except in a very clear case, where both Courts have concurred we do not disturb their findings of fact. *United States* v. *Stinson*, 197 U. S. 200, 207. *The Germanic*, 196 U. S. 589, 595. If ever this rule is to be applied, it should be when those findings are against a charge of fraud and when the effort is to overthrow a patent of the United States. The requirement that the proof should be clear in such a case has been repeated in a series of decisions from the *Maxwell Land-Grant Case*, 121 U. S. 325, to *United States* v. *Stinson*, 197 U. S. 200, 204. There is nothing sufficient to show that Clark had actual knowledge of the arrangement by which Cobban got the lands. The allegation that Cobban was Clark's agent in the purchase wholly breaks down. Clark was at a distance. He dealt as a purchaser with Cobban, and paid him the market price, and a substantial profit even on the Government's calculation. So far as any inference was to be drawn from the nearness of the respective dates of the receiver's receipts, the deeds of the entrymen to Cobban and the deeds of Cobban to Clark, it was as open to the officers of the Government as to Clark, if indeed he knew anything about those dates, yet they seem to have suspected nothing, and he was advised by reputable counsel

that the titles were good, and bought only on his advice. Clark, his agents and advisers, testify that they did not know or suspect anything wrong.

With regard to constructive notice in addition to the facts just mentioned the Government relies on an argument that Cobban began negotiations with Clark before he had acquired title to the lands, not, however, identifying those lands. Assuming this to be true, it requires Clark to have kept that fact in mind when the conveyances were made to him, and noticing the date of the conveyances to Cobban, and of the receiver's receipts, to infer that the negotiations were begun upon a scheme to get the lands from the Government by fraud. It requires an actual and not necessary inference from knowledge, with which Clark may have been chargeable, but which he probably, or at least possibly, did not actually possess. It is argued further that Clark's inspector must have gone upon the land about the time of the entries in order to do the necessary work of estimating the timber. If, for the purposes of argument, we assume that knowledge of a timber inspector of facts affecting the title, with which he had nothing to do, was chargeable to Clark, still the knowledge is a mere guess. There was nothing present or required to be present on the face of the earth to indicate when the entry took place. We cannot infer fraud merely from more or less familiar relations between some of Clark's agents and Cobban.—When suspicion is suggested it easily is entertained. But bearing in mind, as was said in *United States* v. *Detroit Timber & Lumber Co.*, that Clark was not bound to hunt for grounds of doubt, and recurring to the canons of proof laid down by the decisions, and to the findings of the courts below, we are of opinion that the decree dismissing the bill must be affirmed.

Decree affirmed.

Justice McKenna concurs on the law on the authority of *United States* v. *Detroit Timber & Lumber Co.*, and concurs on the facts.

Justices Harlan and Brown dissent.

True copy.

Test:

Clerk Supreme Court, U. S.